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No. 04-9728

IN THE

Supreme Court of the United States

DONALD CURTIS SAMSON,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

On Writ of Certiorari to the Court of Appeal of California, First Appellate District

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

PAMELA HARRIS
NAT'L ASS'N OF CRIMINAL DEFENSE LAWYERS
1625 Eye Street, N.W.
Washington, DC 20006
(202) 383-5300

CARTER G. PHILLIPS*
JEFFREY T. GREEN
THOMAS A. BURNS
DEVON A. CORNEAL
SIDLEY AUSTIN BROWN & WOOD LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for Amicus Curiae

* Counsel of Record

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QUESTION PRESENTED

Does the Fourth Amendment prohibit police from conducting a warrantless search of a person who is subject to a parole search condition, where there is no suspicion of criminal wrongdoing and the sole reason for the search is that the person is on parole?

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INTEREST OF *AMICUS CURIAE*[1]

The National Association of Criminal Defense Lawyers ("NACDL") is a non-profit organization with direct national membership of over 11,500 attorneys, in addition to more than 28,000 affiliate members from all 50 states. Founded in 1958, NACDL is the only professional bar association that represents public defenders and private criminal defense lawyers at the national level. The American Bar Association recognizes NACDL as an affiliated organization with full representation in the ABA House of Delegates.

NACDL's mission is to ensure justice and due process for the accused; to foster the integrity, independence, and expertise of the criminal defense profession; and to promote the proper and fair administration of criminal justice, including issues involving the Bill of Rights. NACDL files approximately 35 *amicus curiae* briefs each year on various issues in this Court and other courts, including many cases involving the Fourth Amendment. See *Illinois* v. *Caballes*, 125 S. Ct. 834 (2005); *Thornton* v. *United States*, 541 U.S. 615 (2004); *Kyllo* v. *United States*, 533 U.S. 27 (2001); *Bond* v. *United States*, 529 U.S. 334 (2000).

SUMMARY OF THE ARGUMENT

This case presents the question whether the Fourth Amendment permits law enforcement officers to conduct warrantless, suspicionless searches of parolees at any time and at any place, regardless of the privacy interests of others nearby, solely because that person has the status of a parolee.

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[1] Pursuant to Rule 37.6, counsel for *amicus* states that no counsel for a party authored this brief in whole or in part and no person, other than *amicus*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. Letters of consent to the filing of this brief have been lodged with the Clerk of the Court pursuant to Rule 37.3.

Respondent State of California has taken a crabbed and ahistorical view of Fourth Amendment protections that would grant unfettered discretion to officers to conduct searches of the persons, homes and effects of parolees and their families. According to California, the Fourth Amendment's "reasonableness" requirement is fully consistent with a policy that gives police officers unchecked authority to "search first, and ask questions later."

California's peculiar understanding of what constitutes a "reasonable" exercise of authority by an officer conflicts with the practices of many of its sister States, which provide some meaning to the reasonableness requirement by demanding that searches of parolees be based at least upon an articulable suspicion. California's position also conflicts with numerous decisions of both State and federal courts. As many of these courts have recognized, parolees may have a diminished expectation of privacy in light of the State's legitimate interests in the protection of citizens and the deterrence of further crime. But parolees live among us in our communities as part of their rehabilitation, and the State's general interests cannot justify a unique grant of authority that is anathema to a free society.

NACDL's mission is to defend those accused of crime and to ensure that constitutional protections in the criminal justice system are strictly construed and honored. NACDL and its members are familiar with the practices in all 50 States and the District of Columbia with respect to parole and probation. From this unique perspective, NACDL seeks to call the Court's attention to three issues of significant importance: first, the degree to which California's proposed practice is at variance with that of other jurisdictions; second, the absence of any justification for California's position; and third, the need for a reasonable suspicion standard as the only sensible check on police powers in this context.

ARGUMENT

I. CALIFORNIA'S STANDARD DEPARTS FROM THE PRACTICES OF ITS SISTER STATES.

No other State has adopted California's practice of allowing any officer to conduct a suspicionless search of the person, home or effects of any parolee at any time and for any reason, excepting only searches somehow deemed to be "arbitrary, capricious or harassing." Instead, most States impose an express "reasonable suspicion" standard. Even the courts of the one State (North Dakota) that has concurred with California that a broad "reasonableness" standard applies have nonetheless taken pains to point out that reasonable suspicion existed for the challenged searches in any event. And no State has upheld the type of random, intrusive search that occurred in this instance upon a sidewalk while Petitioner was walking with his companion and her child.

A. Parole Conditions Generally.

In the United States, parole is a well-established penological tool used to rehabilitate and reintegrate offenders into society. See *Morrissey* v. *Brewer*, 408 U.S. 471, 477-78 (1972) (discussing the purpose of parole); Joan Petersilia, *Parole and Prisoner Reentry in the United States*, 26 Crime & Just. 479, 487-92 (1999). To achieve these goals, States have enacted regulatory frameworks governing parole, which, in part, permit parole boards to impose broad conditions of release upon parolees.[2] The conditions imposed are often

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[2] *See* Ala. Code § 15-22-29; Alaska Stat. § 33.16.150; Ariz. Rev. Stat. Ann. § 31-411; Ark. Code Ann. § 16-206; Cal. Penal Code § 3053; Colo. Rev. Stat. § 17-2-201; Conn. Gen. Stat. § 54-124a; Del. Code Ann. tit. 11, § 4321; D.C. Code § 1986-14; Fla. Stat. § 947.18; Ga. Code Ann. § 42-9-42, -44; Haw. Rev. Stat. § 353-66; Idaho Code Ann. § 20-228; 730 Ill. Comp. Stat. 5/3-3-7; Ind. Code § 11-13-3-4; Iowa Code § 45.2(906); Kan. Stat. Ann. § 22-3717; Ky. Rev. Stat. Ann. § 439.340; La. Rev. Stat. Ann. § 15:574.4; 03-208-001 Me. Code R.; Md. Code Regs. 12.08.01.21; 120 Mass. Code Regs. 300.07; Mich. Comp. Laws § 791.236; Minn. R.

similar from State to State. Thus, significant deviations—such as the one at issue here—raise sensible concerns about improper State infringement upon parolees' constitutional rights.

California's general approach to parole and to parole boards is similar to that in other States. California maintains extensive supervisory powers over parolees and retains the right to revoke parole if the conditions imposed are violated. See Cal. Penal Code § 3056 ("Prisoners on parole shall remain under the legal custody of the department [of corrections] and shall be subject at any time to be taken back within the inclosure of the prison."). Like other States, California gives broad discretion to its parole board by providing that "[t]he Board of Prison Terms upon granting any parole to any prisoner may also impose on the parole any conditions that it may deem proper." *Id.* § 3053(a).

Generally, parole boards have the authority to apply a set of universal, mandatory release conditions, in addition to any special restrictions tailored to an individual parolee's particular circumstances.[3] Among these restrictions are so-called "search conditions." Most such conditions require a parolee to submit to searches of his person, his property, or

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2940.2000; Miss. Code Ann. § 47-7-17; Mo. Rev. Stat. § 217.690; Mont. Admin. R. 20.7.1101; Neb. Rev. Stat. § 83-1,116; Nev. Rev. Stat. § 213.12175; N.H. Rev. Stat. Ann. § 651-A:4; N.J. Admin. Code § 10A:71-6.4; N.M. Stat. § 31-21-10; N.Y. Penal Law § 70.40; N.C. Gen. Stat. § 15A-1374; N.D. Cent. Code § 12-59-07; Ohio Rev. Code Ann. § 753.10; Okla. Stat. tit. 57, § 332.8; Or. Rev. Stat. § 144.270; 61 Pa. Cons. Stat. § 331.23; R.I. Gen. Laws § 13-8-16; S.C. Code Ann. § 24-21-660; S.D. Codified Laws § 24-15A-24; Tenn. Code Ann. § 40-28-117; Tex. Gov't Code Ann. § 508.221; Utah Code Ann. § 77-27-10; Vt. Stat. Ann. tit. 18, § 502b; Va. Code Ann. § 53.1-157; Wash. Rev. Code § 72.04A.070; W. Va. Code § 62-12-17; Wisc. Stat. § 304.06; Wyo. Stat. Ann. § 7-13-402.

[3] The conditions imposed are then set forth in parole forms, the specific content of which varies from state to state and from parolee to parolee. Amicus App. 1a-10a.

both, either without a warrant or expressly upon reasonable suspicion.[4] California's "Notice and Conditions of Parole," for example, informs parolees that "You and your residence and any property under your control may be searched without a warrant by an agent of the Department of Corrections or any law enforcement officer." Amicus App. 1a; see also Cal. Code Regs. tit. 15, § 2511(b). However, the California Penal Code also provides that parolees must agree to warrantless searches "with or without cause." Cal. Penal Code § 3067(a)

B. California's Suspicionless Searches.

Based upon this statutory and regulatory framework, California courts have permitted suspicionless searches of parolees. *People* v. *Reyes*, 968 P.2d 445, 450 (Cal. 1998) (allowing police and parole officers to search parolees without individualized suspicion so long as the search is not "arbitrary, capricious or harassing"). In so doing, California goes against the "the vast majority of jurisdictions that have considered this issue," and which have held that warrantless searches are only permissible when supported by reasonable suspicion. *Reyes*, 968 P.2d at 453 (Kennard, J., dissenting); see also *State ex rel. Corgan* v. *King*, 868 P.2d 743, 746 (Okla. Crim. App. 1994) (noting that the "majority of states that have addressed this issue agree that probable cause is not necessary to justify a warrantless search of a parolee's home,"

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[4] In broad overview, these restrictions fall into one of four categories. First, some parole forms do not contain an explicit search condition, but do contain a catch-all provision allowing imposition of "special conditions" at the court/officer's discretion. Amicus App. 3a, 10a. Second, other forms contain a blanket search condition that does not identify under what terms a search may be conducted. *Id.* at 4a, 7a. Third, still other States require parolees to submit to warrantless searches. *Id.* at 1a, 8a. Fourth and finally, several States require parolees to submit to searches only where the searching officer has reasonable suspicion of a parole violation. *Id.* at 5a, 9a.

but that they do "requir[e] reasonable grounds to exist in order for a warrantless search to be valid").[5]

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[5] The weight of authority on this issue clearly and consistently forbids suspicionless searches of parolees. *See Moreno* v. *Baca*, 400 F.3d 1152, 1163 (9th Cir. 2005); *United States* v. *Williams*, 417 F.3d 373, 376 n.2 (3d Cir. 2005) (interpreting Pennsylvania's parole condition permitting warrantless searches "'to include an implicit requirement that any search be based on reasonable suspicion'") (quoting *United States* v. *Baker*, 221 F.3d 438, 448 (3d Cir. 2000)); *United States* v. *Payne*, 181 F.3d 781, 787 (6th Cir. 1999) (requiring that a parole search be supported by at least reasonable suspicion); *United States* v. *Lewis*, 71 F.3d 358, 361-62 (10th Cir. 1995); *United States* v. *Bennett*, 2005 WL 2709572, at *4 (W.D.N.Y. Oct. 21, 2005) (finding that the New York State Division of Parole Policy & Procedure Manual requires reasonable suspicion for parolee searches); *United States* v. *Crew*, 345 F. Supp. 2d 1264, 1266 (D. Utah 2004); *Riley* v. *Commonwealth*, 120 S.W.3d 622, 627 (Ky. 2003); *State* v. *West*, 517 N.W.2d 482, 484 n.2 (Wis. 1994) (noting that although Wisconsin parolees are subject to warrantless searches, those searches are proper if an officer has "reasonable grounds to believe that the client" is in possession of contraband); *Pena* v. *State*, 792 P.2d 1352, 1357-58 (Wyo. 1990); *State* v. *Ashley*, 459 N.W.2d 828, 830 (S.D. 1990) (stating that although parolees are subject to a warrantless search condition, the condition limited searches to those supported by "reasonable cause . . . ascertained by a parole agent"); *Allan* v. *State*, 746 P.2d 138, 140 (Nev. 1987) (per curiam) (ruling that a parole search must be founded on reasonable belief that "a violation of a parole agreement has occurred"); *State* v. *Bonner*, 811 So. 2d 1151, 1153-54 (La. Ct. App. 2002); *State* v. *Massey*, 913 P.2d 424, 425 (Wash. Ct. App. 1996); *People* v. *Woods*, 535 N.W. 2d 259, 261-62 (Mich. Ct. App. 1995); *King*, 868 P.2d at 745, 746 (ruling that although Oklahoma subjects parolees to searches "'at any time or place,'" state regulations require "reasonable grounds to believe that the offender is keeping contraband" before conducting a search); *People* v. *Slusher*, 844 P.2d 1222, 1225 (Colo. Ct. App. 1992) (stating that a parole search must be predicated on "reasonable grounds to believe that a parole violation has occurred"). *But see Owens* v. *Kelley*, 681 F.2d 1362, 1368 (11th Cir. 1982) (permitting probation searches without individualized suspicion); *Reyes*, 968 P.2d at 451.

Given that some jurisdictions make no distinction between parolees and probationers for Fourth Amendment purposes, cases involving probation searches are relevant here. *See, e.g.*, *Williams*, 417 F.3d at 376 n.1 (stating "'there is no constitutional difference between probation and

Even in the rare instance where a court has upheld suspicionless searches as theoretically permissible, the court was at pains to point out that the search was, in fact, supported by reasonable suspicion. See *State* v. *Smith*, 589 N.W.2d 546, 549-50 (N.D. 1999) (holding that probationary searches need not be based on reasonable suspicion, but then finding that "the reasonable suspicion standard was met here"). The need for a court to bolster its decision with alternative findings on reasonable suspicion strongly suggests that the core holding offering no limitation at all on officer discretion is constitutionally infirm.[6]

This Court has consistently demanded cognizable and meaningful levels of suspicion when granting limited exceptions to the warrant requirement. See, *e.g.*, *Terry* v. *Ohio*, 392 U.S. 1, 18 (1968) (permitting warrantless pat-down

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parole for purposes of the [F]ourth [A]mendment'") (quoting *United States* v. *Hill*, 967 F.2d 902, 909 (3d Cir. 1992)). As such, probation cases requiring reasonable suspicion help inform the analysis in this case. *United States* v. *Giannetta*, 909 F.2d 571, 576 (1st Cir. 1990) (upholding a probation search "so long as the decision to search was in fact narrowly and properly made on the basis of reasonable suspicion"); *United States* v. *Scott*, 678 F.2d 32, 35 (5th Cir. 1982); *United States* v. *Bradley*, 571 F.2d 787, 790 n.4 (4th Cir. 1978); *People* v. *Lampitok*, 798 N.E.2d 91, 106 (Ill. 2003); *State* v. *Fields*, 686 P.2d 1379, 1390 (Haw. 1984) (requiring, where a probation condition forced probationers to submit to warrantless searches, that those searches be "justified by a reasonable suspicion supportable by specific and articulable facts").

[6] Indeed, North Dakota law appears unsettled on this point. *Compare State* v. *Maurstad*, 647 N.W.2d 688, 696 (N.D. 2002) (declining to "apply our prior case law holding reasonable suspicion or probable cause is unnecessary for a probationary search to be valid," because such searches are valid whenever "a probationary search authorized by a condition of probation is supported by reasonable suspicion"), *with State* v. *Perbix*, 331 N.W. 2d 14, 21-22 (N.D. 1983) (permitting warrantless searches of probationers without individualized suspicion so long as the searches are reasonable), *overruled in irrelevant part by State* v. *Maurstad*, 647 N.W.2d 688 (N.D. 2002). As will be discussed below, the justification for such suspicionless searches is grossly overbroad.

searches for officer safety only where supported by reasonable suspicion); *New Jersey* v. *T.L.O.*, 469 U.S. 325, 347 (1985) (permitting warrant-less searches with less than probable cause only where the state has a special need); *Carroll* v. *United States*, 267 U.S. 132, 160 (1925) (permitting warrantless searches of moving vehicles only where the search is supported by probable cause); see also *Moreno* v. *Baca*, 400 F.3d 1152, 1163 n.7 (9th Cir. 2005) (noting that "'special needs'" cases permitting warrantless searches with less than probable cause "have required individualized suspicion in order to conduct targeted searches of individuals"); *United States* v. *Crew*, 345 F. Supp. 2d 1264, 1266 (D. Utah 2004) (holding that parole searches were a "special need[]" and could be conducted without a warrant, but only if those searches were based on reasonable suspicion). Thus, "some quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure." *United States* v. *Martinez-Fuerte*, 428 U.S. 543, 560 (1976). Any "[e]xceptions to the requirement of individualized suspicion are generally appropriate only where the privacy interests implicated by a search are minimal and where 'other safeguards' are available 'to assure that the individual's reasonable expectation of privacy'" is protected by more than an officer's discretion. *T.L.O.*, 469 U.S. at 342 n.8 (quoting *Delaware* v. *Prouse*, 440 U.S. 648, 654-55 (1979)). California's suspicionless parole searches do not provide those "other safeguards."

In its *Reyes* decision (followed in the decision at issue here), the California Supreme Court sought to provide some minimal protection to parolees, in the form of a prohibition on searches of parolees that are "arbitrary, capricious or harassing." *Reyes*, 968 P.2d at 450; *People* v. *Samson*, 2004 WL 2307111, at *2-*3 (Cal. Ct. App. Oct. 14, 2004). This standard, however, collapses into a nullity for two reasons. First, this prohibition is easily avoided by a simple claim—as was made here—that the officer conducted the search as part

of his or her more general duties of protecting public safety. J.A. 38. So long as an officer can provide a "rehabilitative, reformative, or legitimate law enforcement purpose[]" for the search, the courts will uphold it. *Reyes*, 968 P.2d at 450. As Petitioner notes, this standard "does not significantly limit the discretion of law enforcement officers to search parolees." Pet. Br. 22. Indeed, no California court has ever excluded the fruit of such searches because they were arbitrary, capricious or harassing. *Id.* Second, the standard is patently meaningless if the facts as stated here satisfy it. Here, the search conducted is the definition of arbitrary—Officer Rohleder admitted that he does not does not "go after [every parolee] all the time" and offered no explanation for the search other than that Petitioner was a parolee. J.A. 38-39. A standard that ratifies searches based upon nothing more than an officer's peculiar schedule and whim cannot reasonably be described as anything other than arbitrary. On its own terms, then, California's attempt to satisfy some Fourth Amendment concerns fails entirely.[7]

By rejecting this reasonable suspicion standard, California has veered from the body of case law in the State and federal courts that recognizes that, despite their lessened expectations of privacy, parolees are still entitled to Fourth Amendment protection and should not be subjected to suspicionless searches at the whim of any law enforcement officer. Given the importance of Fourth Amendment protections and the weight of authority opposing California's decision to relax those protections, it is particularly important that this Court invalidate suspicionless searches of parolees and reject California's practice.

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[7] Any additional protection that California might argue it has provided by requiring that suspicionless searches be "reasonable" is illusory. By defining reasonableness as being that which is not "arbitrary, capricious or harassing," but failing to give real meaning to those terms, California has eviscerated the protections of the Fourth Amendment for parolees.

II. CALIFORNIA'S COURTS HAVE FAILED TO OFFER A SATISFACTORY JUSTIFICATION FOR ITS PAROLE SEARCH DOCTRINE BECAUSE ONE DOES NOT EXIST.

Warrantless, suspicionless, discretionary parole searches are not justified by reference to California's interests in deterring crime and protecting the public. Neither are such searches justified by parolees' express or implied consent or constructive custody.

A. California's Interests In Deterring Crime And Protecting The Public Do Not Justify Warrantless, Suspicionless, Discretionary Searches Of Parolees.

In *Reyes*, the Supreme Court of California recognized that parole plays a critical correctional purpose; specifically, it is "granted for the specific purpose of monitoring [a parolee's] transition from inmate to free citizen." 968 P.2d at 450. Accordingly, the conditional freedom of parole serves the dual purpose of rehabilitating convicts and protecting the public from future crimes. *Id.* Indeed, California "has a duty not only to assess the efficacy of its rehabilitative efforts but to protect the public." *Id.* Considering California's interests in rehabilitation and protection, the *Reyes* court concluded "the purpose of the search condition is to deter the commission of crimes and to protect the public." *Id.* at 451. As such, "the importance of the latter interest justifies the imposition of a warrantless search condition." *Id.* at 450. That was because deterrence and protection are "enhanced by the potential for random searches." *Id.* at 451.

To be sure, a regime of "random searches" of parolees might "deter the commission of crimes" and "protect the public," but that argument proves far too much. Such an argument might also justify random searches of dwellings in high crime areas or random searches of corporate boardrooms whenever earnings are restated. An appeal to such general

interests sweeps so broadly as to justify random, suspicionless searches in nearly any cognizable context or community where crime has previously occurred. California steadfastly refuses to recognize that these are the very same arguments used to justify a police state. See *Brinegar* v. *United States*, 338 U.S. 160, 180 (1949) (Jackson, J., dissenting) ("Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government."). Persons living in a free society enjoy robust privacy interests that are protected both by *ex ante* procedures (valid warrants, probable cause requirements) as well as *post hoc* remedial measures (exclusionary remedies, limited civil actions). These protections necessarily clash with the interests of public safety and even deterrence. Accordingly, the question is not whether a regime of suspicionless, nonconsensual searches would promote deterrence and protection—as surely it must; instead, the question is whether such a regime is consonant both with the status of parolees and the origins and purpose of Fourth Amendment protections.

B. The Status Of Parolees.

California's unique posture with respect to its parole search doctrine is at odds with its own case law recognizing that parolee status does not extinguish all Fourth Amendment rights. In particular, California courts have explicitly rejected the express consent, constructive custody, and act-of-grace theories. *Reyes*, 968 P.2d at 448 (rejecting express consent theory); *People* v. *Burgener*, 714 P.2d 1251, 1266-67 (Cal. 1986) (declining to justify suspicionless search by relying on custody theory to analogize parolees to incarcerated prisoners), *overruled on other grounds by People* v. *Reyes*, 968 P.2d 445 (Cal. 1998); *People* v. *Edwards*, 557 P.2d 995, 999 (Cal. 1976) (recognizing that the act-of-grace theory is now defunct). This Court should likewise reject each theory as invalid.

1. Consent.

Compulsory parole conditions cannot serve as consent to engage in otherwise unreasonable searches. Fourth Amendment rights (like other constitutional rights) may be waived, and a search rendered permissible where an individual gives knowing, intelligent, and voluntary consent. See *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 222 (1973) (holding that "a search conducted pursuant to a valid consent is constitutionally permissible"); see also *Bumper* v. *North Carolina*, 391 U.S. 543, 548-49 (1968) (explaining that consent is not "freely and voluntarily given" without showing "more than acquiescence to a claim of lawful authority"). But California's parole form waivers are not voluntary, and thus cannot be the basis of a "consent" search.

California's regulatory framework expressly states that parole conditions cannot be construed as a contract between parolees and the State. Cal. Code Regs. tit. 15, § 2512(a) ("The parole conditions are not a contract but are the specific rules governing all parolees whether or not the parolee has signed the form containing the parole conditions."). That is because prisoners have no choice in the matter: in California, parole is mandatory. *Reyes*, 968 P.2d at 448. In other words, *every* prisoner in California becomes a parolee upon release from incarceration; there is no other way in which a prisoner can leave prison Without choice, there can be no voluntary consent to inclusion of the search condition." *Id.*; see also *Burgener*, 714 P.2d at 1266 n.12 (explaining "the parolee's acceptance of parole under the determinate sentencing law is in no sense pursuant to a voluntary agreement by which he has waived his right to privacy in exchange for release on parole").

Scholarly authority accords with California law in its criticism of the contractual waiver theory. Professor Wayne LaFave contends that the "notion that these waivers are unquestionably voluntary" is "a remarkable one to say the least." 5 Wayne R. LaFave, *Search and Seizure: A Treatise*

on the Fourth Amendment § 10.10(b), at 440-41 (4th ed. 2004). Even with respect to probation, Professor LaFave argues that "to speak of consent ... is to resort to a 'manifest fiction,' for 'the probationer who purportedly waives his rights by accepting such a condition has little genuine option to refuse, and the waiver cannot be said to be voluntary in any generally-accepted sense of the term.'" *Id.* (footnote omitted). In this case, of course, the prisoner has *no* "option to refuse," genuine or otherwise, given that California has made parole mandatory – with the result that it is impossible to "speak of consent" in any meaningful way.

The constitutional peril that would attend a rule of law that treated mandatory parole conditions as contractual waivers is both obvious and ominous. Under that theory, a State could attach any requirement it wished to mandatory parole, and thus to all citizens who had at one time been incarcerated. All such citizens, in other words, "could be forced to waive all constitutional rights, including the right to due process in revocation proceedings, or even the right to trial on any new offense allegedly committed during the parole period." *United States* v. *Crawford*, 323 F.3d 700, 718 (9th Cir.), *vacated*, 343 F.3d 961 (9th Cir. 2003), *reaching same result on other grounds*, 372 F.3d 1048 (9th Cir. 2004) (en banc). California has pointed to nothing that would justify such an anomalous and extraordinary result.

2. Parolees Are Not Prisoners.

With respect to the Fourth Amendment, parolees should not be equated with prisoners. Parolees are unlike prisoners, who do not have any Fourth Amendment rights. *Hudson* v. *Palmer*, 468 U.S. 517, 525-26 (1984). Instead of leading highly compartmentalized and rigorously structured lives, parolees' daily affairs more closely resemble those of ordinary free citizens. Even though this Court has held that parolees have *diminished* Fourth Amendment rights, *Morrissey*, 408 U.S. at 480 (stating that parolees are deprived of the "absolute liberty to which every citizen is entitled," and

can claim only "the conditional liberty properly dependent on observance of special parole restrictions"), that is a far cry from holding their Fourth Amendment rights are *extinguished* altogether.

This Court has unequivocally rejected the proposition that the limited Fourth Amendment rights of parolees can be equated to those extinguished rights of prisoners. Whereas in the prison context, this Court found that the Fourth Amendment simply "does not apply within the confines of the prison cell," *Hudson*, 468 U.S. at 525-26, the Court has long observed in the parole context that, "[t]hough the State properly subjects [a parolee] to many restrictions not applicable to other citizens, *his condition is very different from that of confinement in a prison*," *Morrissey*, 408 U.S. at 482 (emphasis added). Consistent with *Hudson*'s analysis, California has also rejected the constructive custody theory. *Burgener*, 714 P.2d at 1266-67.

Scholars universally criticize the notion that parolees can be equated with prisoners with respect to their Fourth Amendment rights. As an initial matter, the first "difficulty with the constructive custody concept is that it is more a conclusion than a theory, and thus can be employed to justify virtually any search of a parolee." 5 LaFave, *supra*, § 10.10(a), at 435-36. Professor Welsh White has criticized the custody theory's premise of equating parolees to prisoners, and suggested a more appropriate legal lens would be the "unconstitutional conditions doctrine." Welsh S. White, *The Fourth Amendment Rights of Parolees and Probationers*, 31 U. Pitt. L. Rev. 167, 178-81 (1969). As a factual matter, parolees bear very little similarity to prisoners.[8] While the circumstances of prison necessitate

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[8] The differences between parolees and prisoners include the following: The parolee is not incarcerated; he is not subjected to a prison regimen, to the rigors of prison life and the unavoidable company of sociopaths. He does not live in a society whose violent, though

"severe deprivation of [F]ourth [A]mendment rights" because, absent frequent suspicionless searches, "the possibility of riots or attempts to escape might be substantially increased," *id.* at 180, parolees obviously do not live in those same circumstances. Accordingly, Professor White concludes "one cannot blithely maintain that for Fourth Amendment purposes, the two groups of citizens may be treated the same." *Id.*

In short, there is no factual or theoretical basis for treating parolees like prisoners for Fourth Amendment purposes, or for using a comparison between the two groups to validate suspicionless searches of parolees.

3. The Act-Of-Grace Theory.

Finally, the act-of-grace theory does not justify completely depriving parolees of their Fourth Amendment rights. This theory is a corollary to the contractual waiver theory. Whereas the contractual waiver approach might be described as a kind of *express* waiver, the act-of-grace theory "might be described as contemplating an *implied* waiver of Fourth Amendment rights arising from acceptance of the 'privilege' of probation or parole." 5 LaFave, *supra*, § 10.10(b), at 438 (emphasis added).

> usually repressed, mores necessitate iron bars and the close watch of armed guards. Routine searches are necessary in prison to prevent dangerous riots and internal violence. . .. A parolee, however, lives in a different environment, one where such problems are absent and searches and seizures are intrusive. The parolee lives among people who are free to come and go when and as they wish. Except for the conditions of parole, he is one of them. His parole represents supervision, rather than repression; and his parole officer is, ideally, an advisor, rather than an armed watchman. If the parole officer is to be the parolee's personal prison guard, it is only because the court decides that he is, and such a decision stands on extraordinarily shaky ground.

William R. Rapson, Note, *Extending Search-and-Seizure Protection to Parolees in California*, 22 Stan. L. Rev. 129, 133 (1969) (footnote omitted).

This Court, however, has already discredited the act-of-grace theory. Compare *Escoe* v. *Zerbst*, 295 U.S. 490, 492-93 (1935) (stating "[p]robation or suspension of sentence comes as an act of grace to one convicted of a crime, and may be coupled with such conditions in respect of its duration as Congress may impose"), with *Gagnon* v. *Scarpelli*, 411 U.S. 778, 782 n.4 (1973) (finding that "a probationer can no longer be denied due process, in reliance on the dictum in *Escoe* v. *Zerbst*, that probation is an 'act of grace'") (citation omitted). The Court has explained that "[i]t is hardly useful any longer to try to deal with this problem in terms of whether the parolee's liberty is a 'right' or a 'privilege.' By whatever name, the liberty is valuable and must be seen as within the protection of the Fourteenth Amendment." *Morrissey*, 408 U.S. at 482. The Supreme Court of California has reached the same result. *Edwards*, 557 P.2d at 999 (recognizing that "the traditional view that a grant of probation is a privileged act of grace or clemency has been discredited in favor of the modern view that such a grant would be deemed an alternative form of punishment in those cases when it can be used as a correctional tool"). As such, any reliance on the "act of grace" doctrine to justify suspicionless searches is improper.

C. General Warrants Rejected.

California's parole search doctrine confers a general warrant upon officers to search the persons, homes and effects of parolees, subject only to a non-harassment condition. The Fourth Amendment embodies the Framers' hostility to precisely such grants of authority to officers. See Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 578 (1999) (explaining that the "delegation of discretionary authority to ordinary, 'petty,' or 'subordinate' officers was anathema to framing-era lawyers")[9]. The Framers' particular concern with the

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[9] A general warrant was "a framing-era term for an unparticularized warrant (for example, ordering a search of 'suspected places'), which was

substance of general warrants was much the same as expressed here—the perceived need to limit the broad discretion of officers to conduct intrusive searches of homes and to thereby disrupt the privacy of the residents and the community's sense of ordered liberty. See William J. Cuddihy, *The Fourth Amendment: Origins and original meaning, 602-1791*, at 237 (1990) (unpublished Ph.D. dissertation, Claremont Graduate School) (on file with UMI Dissertation Services) ("[G]eneral searches and warrants ... furnished an infinite power of surveillance to searchers that exposed every Englishman's dwelling to perpetual, capricious intrusion.").

As here, the general warrant required no showing of cause and delineated no specific boundaries. Davies, *supra*, at 558. It conferred upon common officers essentially unlimited power to search and arrest at their discretion. The Framers found this nearly unmitigated authority especially pernicious given their general distrust of the judgment of common officers. As a result, the search restrictions that ultimately became the Fourth Amendment were a central feature of the compromise between the Federalists and the Anti-federalists that made way for the new federal charter. See generally Davies, *supra*, at 609-11; see also Cuddihy, *supra*, at 1365-79. So strong was the acclamation for such a provision that it was already a feature of many State constitutions at the time the Framers drafted our Constitution. See Cuddihy, *supra*, at 1233-54, 1298-341, 1347-51 (discussing search and seizure in state constitutions). Accordingly, any conferral of the type of authority represented by California's parole search doctrine warrants careful scrutiny against a backdrop of well over 200 years of unmitigated hostility to such power.

California's effort to justify its radical approach on the broad ground of deterrence and public safety likewise

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also commonly applied to a warrant lacking a complaint under oath or an adequate showing of cause." Davies, *supra* at 558.

represents a departure from the Framers' express intent to strictly limit "unreasonable search and seizures." While the Framers held a great distrust for the common officer, they were unconcerned with passing a congressional standard to regulate the warrantless officer as "they did not perceive ordinary officers as possessing any significant discretionary authority ... to initiate arrests or searches." Davies, *supra* at 578. Warrants, and not officers, were the main source of search and arrest authority. Framing-era common law gave no more arrest authority to common officers than it did to the general public, which mandated that a warrantless arrest could be justified only by "felony in fact," and nothing so loose as a general standard of "reasonableness." *Id.*

Given the limited power of the warrantless officer, the Framers intended to "control the officer by controlling the warrant," and had little reason to believe that the probable cause requirement would not effectuate such control. *Id.* at 552. California, however, not only hands back to the officer the very sort of general warrant the Framers despised, but also does so on a ground entirely foreign to them; namely, the notion that an officer's warrantless search or seizure can, without more, be construed as "reasonable" under the Fourth Amendment. Far from "controlling the warrant," California seeks to guarantee "reasonableness through reliance upon the good will of officers, a "deference" that is decidedly "at odds with the central purpose of the Fourth Amendment, which is distrust of discretionary police power." Tracey Maclin, *The Central Meaning of the Fourth Amendment*, 35 Wm. & Mary L. Rev. 197, 248 (1993).

D. The Rights Of Others.

California's parole search doctrine contravenes not only the history of the Fourth Amendment and our nation's long-held hostility to the concept of general warrants, but also the privacy rights and liberty interests of others who may be impacted by the exercise of such broad authority. The breadth of authority that California confers upon its officers

to search the persons, homes and effects of state parolees necessarily threatens the interests of those who are not parolees and who are imbued by the Constitution with a full panoply of rights.

The search here is a case in point. Officer Rohleder stopped Petitioner on the street during an outing with his companion and her infant child, who was in a stroller at the time. While not technically a stop of these other two persons, it was a stop in effect. This Court has given careful consideration to the rights of others in such a context and certainly, where such a stop is predicated upon probable cause or reasonable suspicion, those rights must necessarily yield to public safety concerns. See *Maryland* v. *Wilson*, 519 U.S. 408, 413-15 (1997).

Here, however, California's rule makes manifest the inevitable phenomena of stops and searches that are not predicated on any specific justification. The co-residents of a parolee, for example, are subject to a search of their homes and effects at any time and for any reason short of harassment. To be sure, it may be said that such "third-parties" can avoid this vulnerability by avoiding a parolee altogether. But this is to impose upon those third-parties an "implied consent" theory that, as described above, is roundly and sensibly rejected by many courts, even California's, for parolees themselves. Further, it contradicts the rehabilitative purposes of parole to suggest that law-abiding citizens and family-members should avoid parolees. And, finally, it defies reality to suggest that the families and friends of parolees have a real choice in the matter when parolees, like Petitioner, attempt to resume their lives in the community and their role in the family unit. Neither the communities in which parolees live, nor their families should be put to such a Hobson's choice.

III. THE REASONABLE SUSPICION STANDARD IS THE LEAST RESTRICTIVE MEANS TO PROTECT THE FOURTH AMENDMENT INTERESTS AT ISSUE.

In allowing parole searches so long as they are not arbitrary, harassing, or capricious, the Supreme Court of California has become unmoored from the Fourth Amendment foundation of its parole system. Its approach is both unique and reactionary. It is unique because the overwhelming majority of States require, at a minimum, reasonable suspicion for parole searches. And it is reactionary because it is, in essence, an attempt to return to the general warrant days for which the Fourth Amendment was initially drafted.

Indeed, California's approach turns well-established Fourth Amendment law on its head. It makes no sense to allow suspicionless searches, on the one hand, and then to add a caveat that such searches may not be arbitrary or capricious. All of modern Fourth Amendment law is premised on the understanding that in the law enforcement context, the best and only way to ensure that a search *is not* arbitrary or capricious, or driven by some impermissible motive, is to insist that it *is* based on some articulable suspicion of wrongdoing. See *United States* v. *Knights*, 534 U.S. 112, 121 (2001) ("The degree of individualized suspicion required of a search is a determination of when there is a sufficiently high probability that criminal conduct is occurring to make the intrusion on the individual's privacy interest reasonable."); *Whren* v. *United States*, 517 U.S. 806, 813 (1996) ("Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis."); *Horton* v. *California*, 496 U.S. 128, 138 (1990) (explaining "evenhanded law enforcement is best achieved by the application of objective standards of conduct"); *Terry*, 392 U.S. at 15 ("[C]ourts still retain their traditional responsibility to guard against police conduct which is over-bearing or harassing, or which trenches

upon personal security without the objective evidentiary justification which the Constitution requires."). For all practical purposes, the "reasonable suspicion" requirement is the logical converse of arbitrary, capricious and harassing searches. To avoid the latter, we require the former.

For the reasons discussed above, California's novel experiment in Fourth Amendment law—cutting loose the prohibition on arbitrary, capricious and harassing law-enforcement searches from the reasonable suspicion requirement—has obvious flaws, and is bound to be entirely ineffective. That should come as no surprise. If there were a way to ensure that wholly unconstrained law-enforcement discretion would not be used in arbitrary or capricious ways, or to target racial or other minorities, then there would have been no need for the reasonable suspicion standard in the first place.

The reasonable suspicion standard therefore represents the least restrictive means to accomplish California's monitoring and public safety goals while adequately protecting acknowledged privacy interests. That standard affords officers tremendous flexibility—allowing them to act on mere suspicions that need only be articulable and not wholly irrational. Practically speaking, no standard is less restrictive and yet short of full officer discretion. California's proposed standard does not functionally limit officer discretion in any meaningful way and cannot, in any event, be applied in any sort of "bright-line" manner. Whether any particular action is "arbitrary, capricious or harassing" is patently subjective and difficult to assess fairly in any context, much less by officers who are executing their duties in the street. California's deviation from the reasonable suspicion standard must therefore be rejected in favor of the more prevalent and sound "reasonable suspicion" standard.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeal of California should be reversed.

Respectfully submitted,

PAMELA HARRIS
NAT'L ASS'N OF CRIMINAL DEFENSE LAWYERS
1625 Eye Street, N.W.
Washington, DC 20006
(202) 383-5300

CARTER G. PHILLIPS*
JEFFREY T. GREEN
THOMAS A. BURNS
DEVON A. CORNEAL
SIDLEY AUSTIN BROWN & WOOD LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for Amicus Curiae

* Counsel of Record

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APPENDIX

STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS

NOTICE AND CONDITIONS OF PAROLE

CDC 1515 (REV 05/01)

You will be released on parole effective _____ for a period of **3 YEARS**. This parole is subject to the following notice and conditions. Should you violate conditions of this parole, you are subject to arrest, suspension, and/or revocation of your parole.

You waive extradition to the State of California from any state or territory of the United States or from the District of Columbia. You will not contest any effort to return you to the State of California.

When the Board of Prison Terms determines, based upon psychiatric reasons, that you pose a danger to yourself or others, the Board may, if necessary for psychiatric treatment, order your placement in a community treatment facility or state prison or may revoke your parole and order your return to prison. You and your residence and any property under your control may be searched without a warrant by an agent of the Department of Corrections or any law enforcement officer.

If another jurisdiction has lodged a detainer against you, you may be released to the custody of that jurisdiction. Should you be released from their custody prior to the expiration of your California parole, or should the detainer not be exercised, you are to immediately contact the nearest Department of Corrections' Parole and Community Services Division Office for instructions concerning reporting to a parole agent.

You have been informed and have received in writing the procedure for obtaining a Certificate of Rehabilitation (4852.21 PC).

CONDITIONS OF PAROLE

1. **SPECIAL CONDITIONS MUST:** a) Relate to the crime for which you were convicted, b) Relate to conduct which is itself criminal, c) Prohibit conduct which may be related to future criminality. You are subject to the following special conditions: _____

1. **You will participate in antinarcotic testing in accordance with instructions from a parole agent.**
2. **You will totally abstain from the use of any alcoholic beverages or liquor.**
3. **You will participate in the psychiatric treatment program approved for you by P&CSD.**
4. **You will not have contact with minors without prior approval of P&CSD.**
5. **You will not contact _____, in any manner without the approval of P&CSD.**
6. **You are prohibited from possessing, utilizing or having access to pagers, scanners, police radios or mobile phone equipment, unless you can demonstrate that they are related to legitimate employment needs.**
7. **You will not wear, possess, have access to or display gang attire, insignias or paraphernalia.**
8. **You will not associate with gang members without prior approval from P&CSD.**
9. **You are prohibited from residing within one-quarter mile of any school that contains grades Kindergarten through six.**
10. **You shall not engage in gang participation as defined in CA. Code of Regulation Title 15, Section 2513(e).**
11. **Not to enter the United States Illegally.**
12. **You will successfully complete a batterer's program as directed by P&CSD.**
13. **You will successfully complete a domestic violence/anger management program as directed by P&CSD.**
14. **You shall participate in a drug treatment program at the direction of your parole agent.**
15. **You are prohibited from residing in a "single family dwelling" with any person also required to register pursuant to PC Section 290, unless they are legally related to you by blood, marriage or adoption, "single family dwelling" shall not include a residential facility that serves six or fewer persons.**
16. **You are not to use any name other than _____.**
17. **You will successfully complete parenting counsels classes.**

Reasons for the imposition of special conditions of parole: _____

1) History of drug use/abuse 2) History of alcohol abuse 3) Related to commitment offense 4) History of psychiatric problems 5)Nature of commitment offense 6) Nature of criminal history 7) History of violence or threats of violence 8) Request of _____ 9) Due to nature of commitment offense 10) Due to gang membership or affiliation 11) BPT imposed due to validated gang member 12) Illegal alien status 13) PC 3053.2 14) History of anger management problems 15) Pursuant to PC 3053.2 16) Prop 36 Mandated.

_____ I acknowledge my special conditions of parole.

Parolee's Initials

_____ SIGNATURE OF UNIT SUPERVISOR

_____ DATE SIGNED

2. **RELEASE, REPORTING, RESIDENCE, AND TRAVEL:** Unless other arrangements are approved in writing, you will report to your parole agent on the first working day following your release. Any change of residence shall be reported to your parole agent in advance. You will inform your parole agent within 72 hours of any change of employment location, employer, or termination of employment.

3. **PAROLE AGENT INSTRUCTIONS:** You shall comply with all instructions of your parole agent and will not travel more than 50 miles from your residence without his/her prior approval. You will not be absent from your county of residence for a period of more than 48 hours and not leave the State of California without prior written approval of your parole agent.

4. **CRIMINAL CONDUCT:** You shall not engage in conduct prohibited by law (state, federal, county or municipal). You shall immediately inform your parole agent if you are arrested for a felony or misdemeanor crime. Conduct prohibited by law may result in parole revocation even though no criminal conviction occurs.

5. **WEAPONS:** You shall not own, use, have access to, or have under your control, (a) any type of firearm or instrument or device which a reasonable person would believe to be capable of being used as a firearm or any ammunition which could be used in a firearm, (b) any weapon defined in state or federal statutes

or listed in California Penal Code Section 12020 or any instrument or devicewhich a reasonable person would believe to be capable of being used as a weapon as defined in Penal Code Section 12020; (c) anyknife with a blade longer than two inches, except kitchen knives which must be kept in your residence and knives related to your employment which may be used and carried only in connection with your employment; or (d) a crossbow of any kind.

6. You shall sign the parole agreement containing the conditions of parole specified in the Board of Prison Terms (BPT) Rules Section 2512 and any special conditions imposed as specified in BPT Rules Section 2513. Penal Code Section 3060.5 provides that the BPT shall revoke any prisoner/parolee who refuses to sign the Notice and Conditions of Parole. You have the right to appeal the special conditions of parole. Special conditions imposed by the Parole and Community Services Division may be appealed pursuant to California Code of Regulations (CCR), Section 3084 and 3085. Special Conditions of parole imposed by the BPT may be appealed pursuant to CCR, Section 2050.

I have read or have had read to me and understand the conditions of parole as they apply to me.

CDC NUMBER	PAROLEE'S NAME (Print or Type)	PAROLEE'S SIGNATURE	DATE SIGNED

TO BE COMPLETED BY STAFF:

Does the inmate/parolee have a qualifying disability requiring effective communication? ☐YES ☐NO

If yes, cite the source document and/or observations: _____

What type of accommodation/assistance was provided to achieve effective communication to the best of the inmate's/parolee's ability? _____

STAFF NAME (Print or Type)	STAFF SIGNATURE	DATE SIGNED

State of Connecticut
Board of Pardons and Paroles

Statement of Understanding and Agreement

CONDITIONS OF PAROLE

NAME _____ CJIS NO. _____ RELEASE ON OR AFTER _____

1. **RELEASE DIRECTION.** UPON RELEASE, YOU WILL REPORT TO YOUR ASSIGNED PAROLE OFFICER AS DIRECTED AND FOLLOW THE PAROLE OFFICER'S INSTRUCTIONS. YOU WILL REPORT TO YOUR PAROLE OFFICER IN PERSON, BY TELEPHONE AND IN WRITING WHENEVER AND WHEREVER THE PAROLE OFFICER DIRECTS.

2. **LEVELS OF SUPERVISION.** YOUR PAROLE OFFICER WILL ASSIGN YOU TO ONE OF SEVERAL LEVELS OF COMMUNITY SUPERVISION, DEPENDING UPON YOUR CIRCUMSTANCE. THESE LEVELS OF COMMUNITY SUPERVISION MAY INCREASE DEPENDING UPON CHANGES IN CIRCUMSTANCES, AT THE DISCRETION OF THE PAROLE OFFICER, AND MAY INCLUDE RESIDENTIAL PLACEMENT, ELECTRONIC MONITORING, CURFEW, AVOIDANCE OF SPECIFIC GEOGRAPHICAL AREAS AND AVOIDANCE OF SPECIFIC SOCIAL CIRCUMSTANCES OR INDIVIDUALS.

3. **RESIDENCE.** YOU WILL LIVE IN A RESIDENCE APPROVED BY YOUR PAROLE OFFICER AND YOU WILL COORDINATE ANY CHANGES IN YOUR PLACE OF RESIDENCE THROUGH YOUR PAROLE OFFICER BEFORE MOVING. YOUR PAROLE OFFICER HAS THE RIGHT TO VISIT YOUR RESIDENCE AT ANY REASONABLE TIME.

4. **EMPLOYMENT.** YOU WILL SEEK, OBTAIN AND MAINTAIN EMPLOYMENT THROUGHOUT YOUR PAROLE TERM, OR PERFORM COMMUNITY SERVICE AS DIRECTED BY YOUR PAROLE OFFICER. YOUR PAROLE OFFICER HAS THE RIGHT TO VISIT YOUR PLACE OF EMPLOYMENT OR COMMUNITY SERVICE AT ANY REASONABLE TIME.

5. **MARITAL/DOMESTIC STATUS.** YOU WILL KEEP YOUR PAROLE OFFICER INFORMED OF ANY CHANGES IN YOUR MARITAL OR DOMESTIC STATUS.

6. **FIREARMS PROHIBITED.** YOU WILL NOT USE, OR HAVE IN YOUR POSSESSION OR CONTROL, FIREARMS, AMMUNITION, OR ANY OTHER WEAPON OR OBJECT THAT CAN BE USED AS A WEAPON.

7. **SUBSTANCE ABUSE TREATMENT.** YOU WILL PARTICIPATE IN AN ADDICTION SERVICES EVALUATION AND TREATMENT AS DEEMED APPROPRIATE. YOU WILL FOLLOW THE INSTRUCTIONS OF THE PROGRAM STAFF AND YOUR PAROLE OFFICER AND WILL NOT MAKE ANY CHANGES WITHOUT THE EXPRESS PERMISSION OF THE PROGRAM STAFF AND YOUR PAROLE OFFICER. YOU WILL ALSO SUBMIT TO RANDOM URINALYSIS FOR THE BALANCE OF YOUR PAROLE TERM.

8. **MENTAL HEALTH TREATMENT.** YOU MAY BE REQUIRED TO PARTICIPATE IN A MENTAL HEALTH SERVICES EVALUATION AND TREATMENT AS DEEMED APPROPRIATE. YOU WILL FOLLOW THE INSTRUCTIONS OF THE PROGRAM STAFF AND YOUR PAROLE OFFICER AND WILL NOT MAKE ANY CHANGES WITHOUT THE EXPRESS PERMISSION OF THE PROGRAM STAFF AND YOUR PAROLE OFFICER.

9. **DRUGS PROHIBITED.** YOU WILL NOT USE, OR HAVE IN YOUR POSSESSION OR CONTROL, ANY ILLEGAL DRUG, NARCOTIC OR DRUG PARAPHERNALIA.

10. **TRAVEL.** YOU WILL NOT LEAVE THE STATE OF CONNECTICUT WITHOUT PRIOR PERMISSION OF YOUR PAROLE OFFICER.

11. **OBEY ALL LAWS, REPORT ANY ARREST.** YOU WILL OBEY ALL LAWS, AND TO THE BEST OF YOUR ABILITY, FULFILL ALL YOUR LEGAL OBLIGATIONS, INCLUDING PAYMENT OF ALL APPLICABLE CHILD SUPPORT AND ALIMONY ORDERS. YOU WILL NOTIFY YOUR PAROLE OFFICER WITHIN 48 HOURS OF YOUR ARREST FOR ANY OFFENSE.

12. **GANG AFFILIATION.** YOU WILL NOT ASSOCIATE OR AFFILIATE WITH ANY STREET GANG, CRIMINAL ORGANIZATION OR WITH ANY INDIVIDUAL MEMBERS THEREOF.

13. **STATUTORY RELEASE CRITERIA.** YOUR RELEASE ON PAROLE IS BASED UPON THE PREMISE THAT THERE IS A REASONABLE PROBABILITY THAT YOU WILL LIVE AND REMAIN AT LIBERTY WITHOUT VIOLATING THE LAW AND THAT YOUR RELEASE IS NOT INCOMPATIBLE WITH THE WELFARE OF SOCIETY. IN THE EVENT THAT YOU ENGAGE IN CONDUCT IN THE FUTURE WHICH RENDERS THIS PREMISE NO LONGER VALID, THEN YOUR PAROLE WILL BE REVOKED OR MODIFIED ACCORDINGLY.

14. **ADDITIONAL CONDITIONS.** YOU ALSO MUST ABIDE BY THE FOLLOWING INDIVIDUAL CONDITIONS.

FAILURE TO COMPLY WITH THESE CONDITIONS MAY RESULT IN THE REVOCATION OF PAROLE, AND, IF APPLICABLE, THE LOSS OF GOOD CONDUCT CREDITS EARNED WHILE IN PRISON.

I HAVE READ OR HAVE HAD READ TO ME, IN MY PRIMARY LANGUAGE, THE CONDITIONS OF PAROLE RELEASE. I FULLY UNDERSTAND MY OBLIGATIONS AND AGREE TO COMPLY WITH THESE CONDITIONS OF RELEASE ON PAROLE. IN ADDITION, I UNDERSTAND THAT THESE CONDITIONS SHALL APPLY TO ANY TERM OF SPECIAL PAROLE FOR WHICH I MAY HAVE BEEN SENTENCED TO SERVE.

_____	_____	_____	_____
Parolee	Date	Witness	Date
_____	_____	_____	_____
For the Board of Pardons and Paroles	Date	Hearing Location	Date

PAROLE CONDITIONS AND RESTRICTIONS

I agree to the following and understand that failure to comply with these conditions will subject me to arrest:

1. I will report to the parole officer at such times and places as directed. I will comply with the parole officer's instructions and respond truthfully to all inquiries from the parole officer.
2. I will comply with all lawful orders of the court and the parole board, and all instructions of the parole officer, including all court orders for the payment of fines, restitution, attorney fees, and child support, and the parole supervision fee mandated by RSA 504-A:13.
3. I will obtain the parole officer's permission before changing residence or employment or traveling out of state.
4. I will notify the parole officer immediately of any arrest, summons or questioning by a law enforcement officer.
5. I will diligently seek and maintain lawful employment, notify my employer of my parolee status, and support my dependents to the best of my ability.
6. I will not receive, possess, control or transport any real or simulated weapon, explosive, or firearm.
7. I will be of good conduct and obey all laws.
8. I will submit to breath, blood or urinalysis testing for the presence of any substance, or provide such other sample for testing, or submit to such other test or procedure, as may be directed by the parole board or my parole officer.
9. I will permit the parole officer to visit my residence at any time for the purpose of examination and inspection in the enforcement of the conditions of parole, and submit to searches of my person, property, and possessions as requested by the parole officer.
10. I will not associate with criminal companions or such other individuals as shall be ordered by the court or parole board. Prohibited contacts include victims, other parolees or probationers, and other persons known to the board or to the parole officer as having criminal records.
11. I will not illegally use, sell, possess, distribute, or be in the presence of controlled drugs, shall notify the parole officer of any prescribed medications, and shall not use alcoholic beverages to excess.
12. I waive extradition to the State of New Hampshire from any state in the United States or any other place, agree to return to New Hampshire if directed by the parole officer, and will be responsible for any and all costs, including all travel, in connection with any extradition request or proceeding.
13. The following specific conditions are imposed by the court or parole board:

A. ☐ I will participate regularly in Alcoholics Anonymous/Narcotics Anonymous to the satisfaction of the parole officer.

B. ☐ I will secure written permission from the parole officer prior to purchasing and/or operating a motor vehicle.

C. ☐ I will participate in and satisfactorily complete the following program:

_____

D. ☐ I will enroll and participate in mental health counseling on a regular basis to the satisfaction of the parole officer.

E. ☐ I will not be in the unsupervised company of (female/male) minors at any time.

F. ☐ I will not leave the county without permission of the parole officer.

G. ☐ I will refrain totally from the use of alcoholic beverages.

H. ☐ I will execute and deliver all necessary documents to release any and all otherwise privileged reports relating to medical or mental health care, counseling, employment, or income as may be requested by the parole officer.

I. ☐ Other:

If you violate any of the conditions of your parole, you are subject to arrest, revocation of your parole, and return to the NH State Prison. I hereby certify that I have this date received a copy of the rules and regulations of parole. I have read or had read to me the conditions, and I fully understand and agree to comply with them.

_____ Signature of Witness

_____ Signature of Parolee

_____ Title

_____ Dated

STATE OF OHIO
Department of Rehabilitation and Correction
Adult Parole Authority

CONDITIONS OF SUPERVISION

VIEWING SAMPLE ORDER FORMS FROM OPI

In consideration of having been granted supervision on ____/____/____, I agree to report to my supervising officer according to the instructions I have received and the following conditions:

1. I will obey federal, state and local laws and ordinances, including Chapter 2923. of the Revised Code relating to conduct involving firearms and other deadly weapons, and all orders, rules and regulations of _____ County Common Pleas Court or the Department of Rehabilitation and Correction. I agree to conduct myself as a responsible law abiding citizen. I understand that if I am convicted of a new felony offense while under Post Release Control, the Court may impose an additional prison term consecutive to any prison sentence imposed for the new felony offense.

2. I will always keep my supervising officer informed of my residence and place of employment. I will obtain permission from my supervising officer before changing my residence or my employment. I understand that if I am a releasee and abscond supervision, I may be prosecuted for the crime of escape, under section 2921.34 of the Revised Code.

3. I will not leave the State of Ohio without written permission of the Adult Parole Authority.

4. I will not enter the grounds of any correctional facility nor attempt to visit any prisoner without the written permission of my supervising officer. I will not communicate with any prisoner in any manner without obtaining permission from my supervising officer.

5. I will follow all orders verbal or written given to me by my supervising officer or other authorized representatives of the Court or the Department of Rehabilitation and Correction.

6. I will not purchase, possess, own, use or have under my control, any firearms, ammunition, dangerous ordinance or weapons, including chemical agents, electronic devices used to immobilize, pyrotechnics and/or explosive devices.

7. I will not purchase, possess, use or have under my control any narcotic drug or other controlled substance or illegal drugs, including any instrument, device or other object used to administer drugs or to prepare them for administration, unless it is lawfully prescribed for me by a licensed physician. I agree to inform my supervising officer promptly of any such prescription and I agree to submit to drug testing if required by the Adult Parole Authority.

8. I will report any arrest, citation of a violation of the law, conviction or any other contact with a law enforcement officer to my supervising officer no later than the next business day. I will not enter into any agreement or other arrangement with any law enforcement agency which might place me in the position of violating any law or condition of my supervision, unless I have obtained permission in writing from the Adult Parole Authority, or from the Court.

9. I agree to a search, without warrant, of my person, my motor vehicle, or my place of residence by a supervising officer or other authorized representative of the Department of Rehabilitation and Correction at any time. *Notice: Pursuant to section 2967.131 of the Revised Code, Officers of the Adult Parole Authority may conduct warrantless searches of your person, your place of residence, your personal property, or any property which you have been given permission to use if they have reasonable grounds to believe that you are not abiding by the law or terms and conditions of your supervision.*

10. I agree to sign a release of confidential information from any public or private agency if requested to do so by a supervising officer.

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11. I agree not to associate with persons having a criminal background and/or persons who may have gang affiliation, or who could influence me to engage in criminal activity, without the prior permission of my supervising officer.

12. I agree to comply with all financial obligations, including child support and/or supervision fees as ordered by any court and/or the Department of Rehabilitation and Correction.

13. I agree to give all information regarding my financial status to assist in determining my ability to pay specific financial obligations, to my supervising officer.

14. I agree to follow all rules and regulations of treatment facilities or programs of any type in which I am placed or ordered to attend while under the jurisdiction of the Court, and/or Department of Rehabilitation and Correction.

15. I agree to fully participate in, and successfully complete, the following indicated Sanctions/Special conditions:

16. I agree and understand that if I am arrested in any other state or territory of the United States or in any foreign country, my signature as witnessed at the bottom of this page will be deemed to be a waiver of extradition and that no other formalities will be required for an authorized agent of the State of Ohio to bring about my return to this state.

I understand that I am required to pay the Financial Obligations listed. Failure to do so will negate any eligibility for an early termination of supervision and result in civil suit by the Attorney General's Office.

Financial Obligations

Type	Supervision Fees	Fines	Restitution	Court Costs	Child Support	Other
Amount						
Payment Frequency						
Completion Date						

I understand that I have a grievance process available to me and may request a grievance form from my supervising officer at any time. *However*, I also understand that I may not grieve Parole Board or Court Ordered Special Conditions and/or Sanctions, being arrested for supervision violations, failure to follow directions/instructions of my supervising officer, the final decision of previous grievances, complaints unrelated to supervision, e.g. legislative action, judicial proceedings and sentencing, or any matter exclusively within the jurisdiction of the courts or other agencies, e.g. Human Services. The grievance procedure has been read and/or explained to me and I am indicating by my signature that I understand this process.

I have read or had read to me the conditions of my _____. I fully understand these conditions and I agree to follow them. I understand that a violation of any of these conditions may result in the revocation of my _____ which may result in additional imposed sanctions, including imprisonment.

In addition, I understand that I must follow these conditions until notified by my supervising officer. By my signature I acknowledge that I have received a copy of these conditions of supervision. I further understand that I may request a meeting with my supervising officer or his/her supervisor if I feel any of the conditions or instructions are causing problems. I shall make this request in writing if at all possible.

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I further acknowledge I understand that I am under the supervision of the Adult Parole Authority until I receive a certificate or journal entry terminating my period of supervision. Be advised, ORC 2967.16 (B) establishes the categories for final release from post release control as "favorable" or "unfavorable." If you receive an unfavorable final release from your post release control, this could result in an enhancement of any future felony sentence.

Witness:	Date:	Offender Signature:	Date:

VIEWING SAMPLE ORDER FORMS FROM ORI

RULES AND CONDITIONS OF PAROLE

1. I will report to my parole officer and my employer immediately upon arrival at my destination.
2. I will obey all city, state and federal laws. I agree to immediately report any new arrests to my parole officer.
3. I agree not to leave the State of Oklahoma without prior written permission by my officer and not leave the county without permission of my officer or his/her district office.
4. I agree to report as directed by my officer in person and in writing on the forms provided by my officer. I agree to allow the officer to visit at home, work or other convenient places.
5. I agree to immediately report in person, in writing or by telephone any changes in residence, employment or marital status.
6. I agree not to use or possess drugs other than those legally prescribed by a physician. I agree not to use alcohol nor go onto the premises where alcoholic beverages are served,.
7. I agree not to lie or misrepresent the truth to any member of the Pardon and Parole Board, any employee of the Department of Corrections or any official of the government.
8. I agree not to associate with persons on parole or probation or persons with criminal records, communicate with inmates of any penal institution, except members of the immediate family, unless my parole officer gives permission because of work or other good reason.
9. I agree to pay parole fees of $40 per month, payable in cashier's check or money order to the Department of Corrections Restitution and Accounting.
10. I will comply with all lawful directives issued by my supervising officer or any member of the Department of Corrections.
11. I understand that at any time or place, I am subject to search. In addition, my vehicle and any property under my control are subject to search.
12. I agree to submit to urinalysis or any other substance abuse testing procedures as required by my parole officer.
13. I agree to pay, during the term of my parole, all fines and court costs imposed by the court at the time of my conviction.
14. I understand that Oklahoma State Statute 21 § 1283(d) prohibits anyone under the supervision of the Oklahoma Department of Corrections to own or possess a firearm. I agree not to own, possess or travel in a vehicle with a firearm or explosives.
15. Sex offenders will abide by special sex offender rules.
16. I understand that violations may result in the imposition of sanctions including but not limited to:

Financial Planning	Reintegration Training	Electronic Monitoring	Day Reporting
Mental Health Counseling		Intensive Supervision	Community Service
Temporary Placement in			
Attend AA	Attend M/A	Victim Impact Panel	a community correctional
Attend MRT	Curfew	Weekend Incarceration	facility or jail for up
GED Courses	Intensive Parole	Nighttime Incarceration	to 30 days Supervision

17. I agree to follow the special condition(s) listed below:

I have read these conditions and understand that I must obey them until the term of my parole expires. I understand that failure to comply with these rules and conditions may result in the imposition of intermediate sanctions or revocation of my parole. I also understand that a finding of guilt, or plea of guilty or nolo contendere will be evidence that I failed to obey the law. I will be arrested and sent back to prison to serve the remainder of my sentence plus any new sentences.

_____

WITNESS AND DATE SIGNATURE

_____

WITNESS AND DATE NUMBER

STATE OF TENNESSEE
BOARD OF PROBATION AND PAROLE
Division of Board Operations
Parole Certificate

Parole Type
«ParoleType»

«CertNo»

Certificate Type
«CertType»

«ParoleeName» – PRISON NUMBER «TomisID»,

is eligible to be paroled from the «InstLine»

and there is reasonable probability that said prisoner will remain at liberty without violating the law. It further being the opinion of the Tennessee Board of Probation and Parole that the parole of this prisoner is not incompatible with the welfare of society.

It is hereby ordered that said prisoner be, and hereby is paroled, subjective to the following conditions, effective: **«EffectiveDate»**

1. I will proceed directly to my destination and upon arrival report immediately to my Probation/Parole Officer or in any event no later than 72 hours after release.
2. I will obey the laws of the United States or any state, in which I may be, as well as any municipal ordinances.
3. I will report all arrests, including traffic violations, immediately, regardless of the outcome, to my Probation/Parole Officer. I will, when away from my residence, have on my person my parole identification card and present it to the proper authority.
4. I will not own, possess, or carry any type of deadly weapon (guns, rifles, knives) or any illegal weapons.
5. I will work steadily at a lawful occupation. If I become unemployed, I will immediately report this to my Probation/Parole Officer and then begin to look for another job.
6. I will get the permission of my Probation/Parole Officer before changing my residence or employment, or before leaving the county of my residence or the state.
7. I will allow my Probation/Parole Officer to visit my home, employment site, or elsewhere, and will carry out all lawful instructions he/she gives and report to my Probation/Parole Officer as instructed, and will carry out all lawful instructions of the Administrative Case Review Committee, and will comply with a referral to Resource Center programs, if available, by attending, and will submit to electronic monitoring or community service if required.
8. I agree to a search, without a warrant, of my person, vehicle, property, or place of residence by any Probation/Parole officer or law enforcement officer, at any time.
9. I will not use intoxicants (beer, whiskey, wines, etc) of any kind to excess. I will not use or have in my possession marijuana or other illegal drugs. I will submit to drug screens or drug tests as directed by my Probation/Parole Officer.
10. I will waive all extradition rights and processes and agree to return to Tennessee if at any time prior to my release from parole, the Board of Probation and Parole directs that I do so.
11. I agree to pay all required fees to the Supervision and Criminal Injuries fund.
12. I will not engage in any assaultive, abusive, threatening or intimidating behavior. Nor will I participate in any criminal street gang related activities as defined by TCA 40-35-121. I will not behave in a manner that poses a threat to others or myself.
13. If paroled to a detainer(s), I will report to the office designated if released from that detainer before my Tennessee parole expiration date.

SPECIAL CONDITIONS:

1. «Spec1»
2. «Spec2»
3. «Spec3»
4. «Spec4»
5. «Spec5»

Parole Officer: «ParoleOfficerLine»
Location: «LocationLine»

I fully understand this order of parole, and I agree to comply with such conditions during the period of my parole, this the _____day of _____, 20_____. Further I hereby waive all extradition rights and process and agree to return to Tennessee voluntarily if at any time prior to my release the Tennessee Board of Probation and Paroles directs me to do so. Said parole shall expire upon the sentence expiration date.

_____ WITNESS SIGNATURE

_____ PAROLEE SIGNATURE

Distribution: Central Office, Parole Officer, Parolee, Institution

BP-0815 (Revised 2-97)

RDA N/A

Utah Parole Agreement

I agree to be directed and supervised by agents of the Utah State Department of Corrections and will abide by the following conditions of my parole:

1. Release: On the day of my release from the institution or confinement, I will report to my assigned Parole Agent, unless otherwise approved in writing from the parole office.

2. Absconding: I will not abscond from parole supervision:

a. Reporting: I will report as directed by the Department of Corrections.
b. Residence: I will establish and reside at a residence of record and will not change my residence without first obtaining permission from my parole agent.
c. Leaving the State: I will not leave my state of residence, even briefly, or any other state to which I am released or transferred without prior written permission from my parole agent.

3. Conduct: I will obey all State, Federal and municipal laws. If arrested, cited or questioned by a peace officer, I will notify my parole agent within 48 hours of the incident.

4. Home Visits: I will permit visits to my place of residence by agents of Adult Probation and Parole for the purpose of ensuring compliance with the conditions of my parole. I will not interfere with requirement; I.e. Having vicious dogs, perimeter security doors, refusing to open the door, etc.

5. Searches: I will permit agents of Adult Probation and Parole to search my person, residence, vehicle or any other property under my control, without a warrant, at any time, day or night, upon reasonable suspicion to ensure compliance with the conditions of my parole.

6. Weapons: I will not own, possess, have under my control or in my custody any explosive, firearms, or dangerous weapons as defined in Utah Code Annotated, Section 76-10-501, as amended.

7. Employment: Unless otherwise authorized by my parole agent, I will seek, obtain, and maintain verifiable, lawful full-time employment (32 hours per week minimum) as approved by my parole agent. I will notify my parole agent of any change in employment within 48 hours.

8. Association: I will not knowingly associate with any person who is involved in criminal activity or who has been convicted of a felony, without approval from my parole agent.

9. Chemical Analysis: I will submit to testing of my breath, body fluids or hair to ensure compliance with my parole agreement.

10. Truthfulness: I will be cooperative, compliant and truthful in all my dealings with Adult Probation and Parole.

11. Fees: I will pay supervision fees as determined by the Department of Corrections.

12. Special Conditions: I will 1.____ 2. ____ 3. ____

I have read, understand, and agree to be bound by this agreement. If I violate any of these conditions of this agreement, the Board of pardons and Parole may revoke my parole or the Department of Corrections may take other appropriate action against me.

Date _____ Signed _____ USP NO. _____ Date _____

Witnessed by _____ Authorized By _____
Board of Pardons

(COPIED AND PASTED FROM UTAH'S WEBSITE)

TO: _____ **No.** _____

In accordance with law (Title 53,1-136, Chapter IV, Code of Virginia) you have been granted parole, and if accepted by you, your release from the Department of Corrections is directed on _____.
You are placed under the custody and control of the Virginia Parole Board subject to the parole conditions listed below. While you are on parole the Board may revoke your parole, based on a violation of one or more of the conditions of parole, based on a finding by the Board that you are otherwise unfit or unsuitable to remain on parole supervision. Your parole may be extended beyond the established parole period for good cause shown. You are subject to arrest upon cause shown by the Parole Board or the Parole Officer. Your minimum date of release from supervision is _____, but you will remain under supervision until you receive the final order of discharge from the Parole Board.
Your general parole conditions are:

1. I will obey all Federal, State and local laws and ordinances.
2. I will report any arrest, including traffic tickets, within 3 days to the Parole Officer.
3. I will maintain regular employment and I will notify the Parole Officer promptly of any changes in my employment.
4. I will report in person or by telephone to the Probation and Parole office listed below within three working days of my release from incarceration, and as otherwise instructed thereafter.
5. I will permit the Parole Officer to visit my home and place of employment.
6. I will follow the Parole Officer's instructions and will be truthful, cooperative, and report as instructed.
7. I will not use alcoholic beverages to the extent that it disrupts or interferes with my employment or orderly conduct.
8. I will not unlawfully use, possess or distribute controlled substances or related paraphernalia.
9. I will not use, own, possess, transport or carry a firearm.
10. I will not change my residence without the permission of the Parole Officer. I will not leave the State of Virginia or travel outside of a designated area without permission of the Parole Officer.
11. I will not abscond from supervision. I understand I will be considered an absconder when my whereabouts are no longer known to my supervising officer.

The special conditions ordered by the Parole Board are:

Your release plan is:
By direction of the
Virginia Parole Board

_____
COMMUNITY RELEASE MANAGER, DIVISION OF OPERATIONS

I have read (had read and explained to me) the above and by my signature or mark below acknowledge receipt of this and understanding of the requirements upon me.
Any person sentenced to a term of incarceration for a felony offense committed on/or after January 1, 1995, shall not be eligible for parole for that offense. A maximum of four and one-half days sentence credit may be earned for each thirty days served for that offense. Pursuant to Virginia Code section 2.1-382, you are hereby notified that the following parolee status information will be released upon request on/after July 8, 1996: your name, current address, offense, age, gender, race and the starting and minimum expiration date of your parole. If you have any questions, please contact your Probation and Parole Officer.____[INITIAL]

Parolee: _____ Date _____
Witness: _____ Date _____